

## Chapter 8: Calculating Child Support

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The instructions found on pages 25-28 for child support calculation are a very detailed explanation of the factors that the Court will consider when determining the appropriate amount of child support to be paid. The following 3 pages offer some key points to remember.

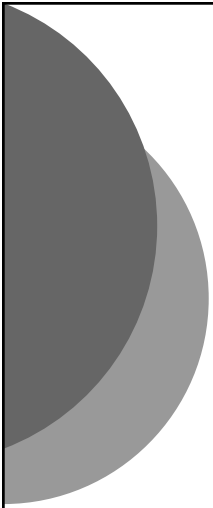
Page 24 is a blank child support calculation that you may use to estimate the amount of child support that may be owed. An automated version of this calculation is available online at <http://courts.state.de.us/family>.

The Family Court of the State of Delaware has established the Delaware Child Support Formula under Family Court Civil Rule 52(c). This formula outlines the procedure for determining a child support obligation in the State of Delaware. The formula is based on the following principles pursuant to 13 Delaware Code §514:

Each parent is entitled to keep a minimum amount of income for their basic needs.

Each child's basic needs are taken care of before the parents may retain any additional income.

If income is available after the primary needs of the parents and each child are met, the child(ren) is (are) entitled to share in any additional income of the parents.



## Chapter 8: Calculating Child Support cont'd

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### Things to keep in mind for child support calculations

The specific instructions for calculating child support are found on pages 25-28. The following are a few key points to remember:

#### **The Melson Formula is a Rebuttable Presumption**

-The Delaware Child Support Formula serves as a rebuttable presumption for establishing child support obligations in the State of Delaware. This means that the Court will use the Formula unless it finds that the results would not be in the best interest of the child(ren) or would be unfair to the parties involved.

#### **Income Attribution**

- Each party is attributed with their actual income, as shown on pay stubs, tax returns or other similar documents. The Court will attribute income to either party in the following situations:

- voluntary unemployment or unemployment due to misconduct
- underemployment (not working up to one's earning capacity based on training, education and experience)
- failure to provide sufficient evidence of income
- failure to appear at a mediation conference or court hearing

-The Court may use the Department of Labor wage surveys to estimate a party's earning capability.

-Every parent will be presumed to have an earning capacity of at least minimum wage, or \$1,300 per month.

-If a party receives unemployment or disability compensation, they must present evidence of this income at the mediation conference or hearing.

## Chapter 8: Calculating Child Support cont'd

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### **Child Care Expenses**

The Melson Formula allows for the fair allocation of all expenses for child care required for the parent(s) to work. Child care expenses must be documented and presented at the mediation conference/hearing. Cancelled checks, childcare contracts and receipts are acceptable forms of documentation.

### **Private School**

Private school expenses will only be included as primary expenses where:

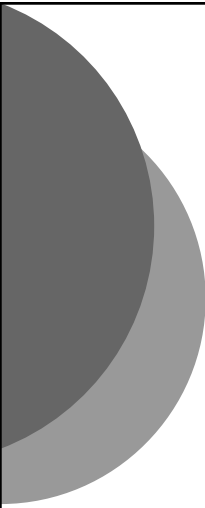
- 1) the parties have adequate financial resources
- 2) Consideration of the specific case, including whether:
  - the parents previously agreed to pay for private school
  - the child has special needs that cannot be accommodated in a public school setting
  - immediate family history indicates that the child would likely have attended private school but for the parties' separation.

### **Shared Equal Placement**

Shared equal placement of a child(ren) is determined by the number of annual overnights the child(ren) spends in each household. If the number of overnights is at least 175 per year, the parties are considered to have shared equal placement and each child(ren) will be counted at one-half in each household for purposes of the calculation.

### **Parenting Time Adjustment**

If a child spends an average of more than 109, but less than 175 annual overnights in the household of the parent from whom support is sought, the calculation shall be adjusted to reflect the amount of extra time spent with the parent.



## Chapter 8: Calculating Child Support cont'd

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### **Adjustment for Support of Other Children**

The child support calculation will consider the number of other children not of this relationship supported by each parent.

# The Family Court of the State of Delaware

## CHILD SUPPORT CALCULATION

Case Name: \_\_\_\_\_  
Petition #: \_\_\_\_\_

Calculation Date: \_\_\_\_\_  
Period Covered: \_\_\_\_\_

		1 Gross Income				Father	Mother	
		wages	+	self emp.	+			
<b>NET INCOME AVAILABLE</b>	Father							
	Mother							
	2 Taxes		Federal + FICA + State + other					
	Father							
	Mother							
	3 Deductions		Medical + Pension + Union + other					
	Father							
	Mother							
	4 Self Support Allowance*	4					\$ 970	\$ 970
	5 Net Income after Self-Support (Line 1 – Lines 2, 3 & 4)	5						
6 Number of Children <u>not</u> of this union supported by each party	6							
7 Adjustment for Support of Dependent children (Table A)	7					%	%	Total
8 Net Available for Primary Support (Line 5 x Line 7)	8							
<b>PRIMARY</b>	9 Share of Total Net Available (Line 8 ÷ Line 8 Total)	9				%	%	100%
	10 Number of Children of this union in each household	10						
	11 Primary Support Allowance (Table B)	11						
	12A A – Child Care expenses necessary for parent to work	12A						
	12B B – Private School Tuition   other primary expenses	12B						
	13 Primary Need (Line 11 Total + Lines 12A & B Totals)	13						
14 Primary Support Obligation (Line 9 x Line 13)	14							
<b>SOLA</b>	15 Net Available for SOLA (Line 8 minus Line 14)	15						
	16 Standard of Living Adjustment Percentage (Table B)	16				%	%	
	17A A – SOLA Obligation (Line 15 x Line 16)	17A						
	17B B – SOLA per child (Line 17A Total ÷ Line 10 Total)	17B						
18 Gross Monthly Obligation (Line 14 + Line 17A)	18							
<b>CREDITS</b>	19 Primary/SOLA retained (Line 10 x per child SOLA + Line 11)	19						
	20 Child Care/Tuition paid by each parent (Line 12A + Line 12B)	20						
	21A Parenting Time Adjustment - Table C % x other party's Line 19 but not more than Line 18 (unless 21A = 50%)	21A				%	%	
	21B	21B						
	22A A - Maximum % of Net Income after Self Support (Table D)	22A				%	%	
	22B B – Maximum Available for this household (Line 22A x Line 5)	22B						
<b>23 Net Monthly Obligation</b>		(Line 18 minus Lines 19, 20 & 21B but not more than Line 22B)				23		

Table A*		Table B*				Table C		Table D				
children	%	children	primary	SOLA	minimum	overnights	%	# other children	# Children w/other parent			
0	100	1	430	16	86	Up to 109	0		1	2	3	4+
1	82	2	720	24	144	110 – 132	10	0	100	100	100	100
2	73	3	990	30	198	133 – 150	20	1	50	60	70	75
3	66	4	1240	35	248	151 – 164	30	2	40	50	60	65
4	61	5	1470	38	294	165 – 174	40	3	30	40	50	55
EA	- 4	EA	+230	+3	+46	175 +	50	4+	25	35	45	50

\*For use January 1, 2007 through December 31, 2008.

# The Family Court of the State of Delaware

## INSTRUCTIONS FOR CHILD SUPPORT CALCULATIONS (2007/2008)

The Family Court of the State of Delaware has established the Delaware Child Support Formula under Family Court Civil Rule 52(c). This formula outlines the procedure for determining a child support obligation in the State of Delaware. The formula is based on the following principles pursuant to 13 Delaware Code §514:

- Each parent is entitled to keep a minimum amount of income for their basic needs.
- Each child's basic needs are taken care of before the parents may retain any additional income.
- If income is available after the primary needs of the parents and each child are, the child(ren) is (are) entitled to share in any additional income of the parents.

As of January of 2007, all allowances and percentages have been indexed to designated elements of the Consumer Expenditure Survey published annually by the U.S. Department of Labor. These values will be adjusted every two years based upon the most recent available expenditure information on single parent households for food, clothing, shelter and utilities which are widely considered the leading indicators of basic household need. Both prospective and retroactive calculations shall be governed by this instruction.

The Delaware Child Support Formula serves as a rebuttable presumption for establishing child support obligations in the State of Delaware. The Court will use the Formula unless it finds that the results would not be in the best interest of the child(ren) or would be inequitable to the parties involved. Dalton v. Clanton, Del. Supr., 55 A.2d 1197 (1989).

An automated version of the Child Support calculation is available online at <http://courts.state.de.us/family>.

### INCOME ATTRIBUTION

The Court will use a parent's actual income if the parent is fully employed in a manner commensurate with their training and experience. A **Rule 16A Financial Report Form** is required to be submitted with supporting documentation at the mediation and before trial. Adequate supporting documentation usually is the parent's most recent tax returns, W-2 Forms, and three most recent pay stubs. Parents who are unemployed or underemployed either voluntarily or due to their own misconduct, and parents who fail to provide adequate documentation or to appear for the hearing or mediation may be "attributed" income. Parents who qualify for unemployment compensation will be presumed to have lost their employment by no fault of their own. Qualification for Social Security disability-type benefits is proof that a person has a disability which may impede their ability to work and pay support. The Court will examine earnings history, employment qualifications and the current job market. Wage surveys for individual occupations compiled by government agencies can be used to estimate earning capacity (and are available in the Self Help Centers of each Family Court). Absent adequate information, a parent may be attributed at least as much income as the other party and every parent is presumed to have an earning capacity of no less than \$1,300 per month. Parents who suffer a loss of income due to their own misconduct may have their support obligation calculated based upon actual current earnings where over a reasonable period of time they have earnestly sought to achieve maximum income capacity.

### NET AVAILABLE INCOME

Net available income is determined by taking gross income and subtracting taxes, other important payroll deductions and a self support allowance. All amounts must be monthly. To convert from weekly, multiply by 52 and then divide by 12. For biweekly, multiply by 26 and then divide by 12. All amounts are rounded to the nearest whole number.

**Line 1--Monthly Gross Income**--Generally, all income must be included in the child support calculation. The Court can exclude second job income upon consideration of its history, purpose, amount and effect on visitation. Expense reimbursements or in-kind payments received in the course of employment, self-employment, or operation of a business should be counted as income if they are significant and reduce personal living expenses. However, a cost of living stipend paid as compensation due to transfer to a high cost location will not be included as income as long as it is clearly identified on pay documents. **Monthly Gross Income** is the combination of the following:

**Wages:** This includes salaries, wages, commissions, bonuses and any other income (other than self-employment income) that is subject to Federal Retirement and/or Medicare taxes. For child support purposes, it also includes all income and benefits identified by an employer as "pre-tax".

**Self:** All income earned as an independent contractor and subject to federal self-employment tax.

**Unearned:** All other taxable income including but not limited to dividends, severance pay, pensions, interest, trust income, annuities, capital gains, workers' compensation, unemployment compensation, disability insurance benefits, prizes, and alimony or maintenance received.

**Nontax:** All other income not subject to income taxation. This includes most Social Security Disability (SSD) or retirement benefits and some private pension/disability benefits. Benefits paid to a child on account of a parent's disability are included in that parent's income but offset the Net Monthly Obligation dollar for dollar. Benefits paid to a child due to the child's own disability are included as income to the household in which it is received.

**Line 2--Taxes:** Utilizing IRS and Delaware Department of Revenue income tax withholding tables or the Family Court tax estimation worksheets, record each parent's income tax liability based upon a single tax status with one (1) exemption. Delaware State income tax shall be utilized for all persons regardless of State of residence. The Family Court worksheet also estimates Self Employment Tax liability. Enter the amount for each parent for each of the separate tax categories. Add these taxes across the line and enter the results.

**Line 3--Allowable Deductions** (add the following across the line and enter the result in the appropriate column):

**Medical Insurance**--Monthly medical insurance premiums (including COBRA payments) paid by either parent regardless of persons covered by the policy.

**Pension**--Enter any mandatory retirement contributions. If that amount is less than 3% of gross income, voluntary contributions to a 401(k) or similar IRS approved retirement plan of up to 3% (including mandatory) of gross income may also be deducted.

**Union Dues**--Enter the average monthly union dues.

**Other**--Enter the monthly amount of any court ordered alimony payments to the other parent, or other allowable business expenses (such as supplies required by the employer to be purchased). Alimony paid must also be subtracted from taxable income when calculating Federal and State income tax liability (but not "FICA").

**Line 4--Self Support Allowance:** The self-support allowance is the minimum amount of income necessary for a parent to remain productive in a workplace. Each parent is given a self support allowance of \$970.

**Line 5--Net Income after Self Support:** Subtract taxes (Line 2), Deductions (Line 3) and Self Support (Line 4) from Gross income (Line 1).

**Line 6--Number of Children Not of this Union Supported by each Parent:** Enter the number of children of other relationships to whom a duty of support is owed either in or out of each parent's household. Children outside a parent's household should only be counted if there is a court order for support or proof of a pattern of support.

**Line 7--Adjustment for Support of Other Children:** Enter the appropriate percentage as determined by the number of children on Line 6 and the table below (but not less than 50%):

Number of Children	Percentage
0	100%
1	82%
2	73%
3	66%
4	61%
Each Additional	minus 4%

**Line 8--Net Available for Primary Support:** Multiply each parent's Net Income after Self Support (Line 5) by the percentage on Line 7. Enter the result for each parent. Add the figures for Father and Mother to get the total available income. Enter the result in the total column.

**Line 9--Share of Total Net Available:** Divide the Net Available for Primary Support for each parent (Line 8) by the Total Net Available for Primary Support (Line 8 Total). Enter the result for each parent.

**Medical Expenses**--The child support recipient is responsible for the first \$350 of unreimbursed medical costs actually expended each calendar year. Additional amounts are allocated according to the **Share of Total Net Available** (Line 9). The \$350 threshold does not apply to shared or split placement cases. Parents should attempt to manage medical reimbursement issues privately. A petition for reimbursement should be filed no later than December 31 in the second year after the expenditure. For example, 2007 expenses must be pursued by the end of 2009.

## PRIMARY SUPPORT

The Court has established minimum levels of income needed to support one or more children. This primary support allowance is added to any work related child care expenses, private school expenses (under some circumstances), and any other expenses for any ongoing special needs of a child.

**Line 10--Number of Children of this Union in each Household:** Enter the number of children of this union who reside in each parent's household. If children reside equally in both households, include them in the home of the parent who is seeking support and an adjustment will be made at Line 21. Add the number in the Father's and Mother's column and enter the result in the Total column. Do not include children from other relationships.

**Line 11--Primary Support Allowance:** Enter the Primary Support Allowance that matches the number of children in Line 10 for each household (see table below). Add the columns and enter the result in the Total column.

<u>Number of Children</u>	<u>Primary Support Allowance</u>
1	\$430
2	720
3	990
4	1240
each additional	+230

**Line 12A--Child Care Expenses necessary for parent to work:** Enter the actual Monthly Child Care Expenses for the children of this support action required for the parent to work or seek work. No hypothetical or attributed childcare costs are permitted. Documentation should be attached to the Form 16(a) financial report.

**Line 12B--Other Primary Expenses:** Enter any other necessary monthly expenses incurred because of any special needs of the child(ren). Private or parochial school expenses will only be included if the parents have adequate financial resources and upon consideration by the Court of all of the equities especially:

- Previous agreement to pay for child(ren)s' attendance in private; or
- The child has special needs that cannot be accommodated in a public school setting; or
- Immediate family history indicates that the child likely would have attended private or parochial school..

**Line 13--Total Primary Need:** Add the totals from Lines 11, 12A and 12B. Enter the result in the total column.

**Line 14--Primary Support Obligation:** Multiply the Share of Total Net Available to each parent (Line 9) by the Total Primary Need (Line 13 Total). Enter the result for each parent.

### STANDARD OF LIVING ADJUSTMENT (SOLA)

If there is income available after the parents have met their own and their child(ren)'s primary support needs, the SOLA adjustment is made. SOLA is designed to give the child(ren) a share in each parent's economic well being similar to what the child(ren) would have received if the parents lived as a single family unit.

**Line 15--Net Available for SOLA:** Subtract the Primary Support Obligation (Line 14) from the Net Income Available for Primary Support (Line 8) for each parent. Enter the result for each parent (but not less than "0").

**Line 16--SOLA Percentage:** Enter the SOLA percentage that corresponds to the Number of Children Due Support in this Support Action (Line 10 Total) but not more than 50 percent.

<u>Number of Children</u>	<u>SOLA Percentage</u>
1	16%
2	24%
3	30%
4	35%
each additional	+3%

**Line 17a--SOLA Obligation:** Multiply the Net Available for SOLA (Line 15) by the SOLA Percentage (Line 16). Enter the result for each parent, and then combine the parents' individual SOLA obligations for the total.

**Line 17b--SOLA per child:** Take total SOLA obligation (Line 17A total) and Divide by the Total Number of Children of this Union in each Household (Line 10 Total). Enter the result in the third column as the "per child" SOLA.

**Line 18--Gross Monthly Obligation:** Add the Primary Support Obligation (Line 14) for each parent to the SOLA Obligation (Line 17A). Enter the result for each parent.



## CREDITS AND THE NET MONTHLY OBLIGATION

The Net Monthly Obligation is the Primary Support obligation plus the SOLA obligation minus applicable credits and subject to certain limitations. In most cases, the "custodial" parent merely keeps their own obligation and the obligated parent pays the amount on Line 18. However if the parent from whom support is sought has the children more than 109 overnights per year, has limited income, or incurs daycare or tuition expenses, further adjustments may be necessary.

**Line 19--Retained Primary and SOLA:** Multiply the number of children in each household (Line 10) by the "per child" SOLA on Line 17. Then add that to the Primary Support Allowance claimed by each party on Line 11.

**Line 20--Child Care / tuition paid by each parent:** Enter the total of Lines 12A and 12B for each parent.

**Line 21--Parenting Time Adjustment:** When a child spends more than 109 overnights per year in the home of the parent from whom support is sought, that parent may retain a percentage of the primary support allowance and the parents' combined SOLA. To determine the credit, enter on Line 21A the percentage from the following table corresponding to the number of annual overnights. Then multiply the percentage by Line 19 of THE OTHER PARENT and enter the result on Line 21B. If there are multiple children in different ranges, the percentages should be averaged. In all cases where the percentage is less than 50% the overnights must be evidenced by a Court order or written agreement, and Line 21B shall not exceed their own SOLA obligation (Line 17a).

Annual Overnights	Percentage
Up to 109	0%
110 to 132	10%
133 to 150	20%
151 to 164	30%
165 to 174	40%
175 +	50%

**Note:** The Family Court Standard Visitation Guidelines constitute 90 average annual overnights.

**Line 22--Self Support Protection:** Enter on Line 22A the percentage indicated in the table below based upon the number of children of this union in the other parent's home (Line 10 other parent) and the number of other children each parent has to support (Line 6 and 10). Multiply the percentage by each parent's Net Income after Self Support (Line 5) and enter the result on Line 22B.

Any other children	Children in other parent's home			
	1	2	3	4+
0	100	100	100	100
1	50	60	70	75
2	40	50	60	65
3	30	40	50	55
4+	25	35	45	50

**Line 23--Net Monthly Obligation:** For each parent, subtract Primary/SOLA retained (Line 19), Childcare/tuition retained (Line 20) and the Parenting Time adjustment (Line 21B) from Gross Monthly Obligation (Line 18). Enter the result but not more than the amount on Line 22B.

**Minimum Orders:** The Court generally will not impose an obligation of less than 20% of the applicable primary support allowance. This restriction does not apply to shared placement (175 or more overnights in each household), or where the obligated parent is disabled. The obligation of a disabled person with limited resources will be determined upon consideration of the totality of the circumstances.

**Modification:** Petitions for modification filed within two and one-half years of the calculation of a current support obligation must allege "with particularity" a substantial change of circumstances not caused by the Petitioner's voluntary or wrongful conduct. Additionally, no modification will be ordered unless the new calculation produces a change of more than 10%. Beyond 2½ years, neither the "particularity" nor the "10%" requirements applies.

**Termination:** A child support obligation originally established under Delaware law terminates upon a transfer of custody or the emancipation of all of the children who are the subject of the obligation. A transfer of custody (to the obligated parent) must be evidenced by a Court Order or written agreement. Emancipation occurs when a child is 18 and is no longer attending high school but never later than the child's 19th birthday.